

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992:)
)
Cable Home Wiring)
)

MM Docket No. 92-260

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To: The Commission

COMMENTS OF THE NEW YORK CITY
DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

The New York City Department of Information Technology and Telecommunications ("City of New York" or "City") submits these comments in response to the Federal Communications Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION

On February 1, 1993, the Federal Communications Commission ("Commission" or "FCC") adopted its Report and Order on Cable Home Wiring² ("Report and Order") pursuant to Section

¹ Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, First Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 92-260, FCC 95-503, released Jan. 26, 1996. ("Home Wiring Recon. and FNPRM") See 47 C.F.R. §§ 76.5(11), 76.801, as amended.

² Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, MM Docket No. 92-260, FCC 93-73, released Feb. 2, 1993, 8 FCC Rcd 1435 (1993) ("Report and Order"). See 47 C.F.R. §§ 76.5(11), (continued...)

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16(d) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").³ The Commission prescribed rules prohibiting cable operators from removing operator-owned home wiring following voluntary termination of service without first providing the subscriber an opportunity to acquire it.⁴ On reconsideration, the Commission specified the procedure a cable operator must follow if it wishes to remove the home wiring when a subscriber voluntarily terminates service, and shortened from thirty to seven business days the time period after termination of service during which the operator has the right to remove any home wiring it owns.⁵ In addition, the Commission sought comment on: (a) whether its cable home wiring rules should apply to "loop-through" wiring configurations where all subscribers elect to switch to an alternative multichannel video programming distributor ("MVPD"); and (b) whether persons other than the individual subscriber should have the right to purchase cable home wiring under certain specific circumstances.⁶

The City continues to support the objectives of the Commission's existing home wiring rules; i.e., (1) enabling

(...continued)
76.5(mm), 76.801-02 (1994).

³ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 § 16(d), 106 Stat. 1460, 47 U.S.C. § 544(i) ("1992 Cable Act").

⁴ 47 C.F.R. § 76.802 (1994). Under the Commission's original cable home wiring rules, the system operator must offer such wiring to subscribers at its replacement cost and, if the subscriber declines, must then remove it within 30 days or make no subsequent attempt to remove it or to restrict its use.

⁵ Home Wiring Recon. and FNPRM at para. 18, 21; 47 C.F.R. § 76.802, as amended.

⁶ Home Wiring Recon. and FNPRM at paras. 40-42.

consumers to avoid any disruption or property damage the removal of wiring may cause and (2) fostering competition in the multichannel video programming distribution market by permitting consumers to avoid the cost and inconvenience of having new or redundant wiring installed when subscribing to alternative or additional programming distributors.⁷

II. BACKGROUND

Due to the character of urban cable television construction, New York City has particular concerns regarding the ownership and use of both internal home wiring and common wiring.⁸ Disputes in the City have arisen where a second multichannel video programming distributor has begun to serve consumers living in multiple dwelling units. Such wiring access disputes will probably increase as competition continues to develop in the multichannel video programming distribution market.⁹

Based upon its experience with service and competitive access problems in an urban environment, in 1990 the City prohibited loop-through wiring by means of provisions in its renewal cable television franchises. Such wiring configurations give either the initial subscriber in the loop or the building manager inordinate control over cable service provided to all remaining subscribers on the wire, and therefore preclude

⁷ Report and Order at para. 3; See H.R. Rep. No. 628, 102d Cong., 2d Sess. at 118 (1992) ("House Report"), S. Rep. No 92, 102d Cong., 1st Sess. at 23 (1991) ("Senate Report").

⁸ See Comments of the New York City Department of Telecommunications and Energy, dated December 1, 1992, in MM Docket No. 92-260 (Cable Home Wiring).

⁹ Id. at 5.

individual subscriber choice. Moreover, repair and servicing of loop-through configurations are problematic because service personnel may require access to every apartment unit on the loop in order to service or repair the system.¹⁰

In previous comments on this docket, the City suggested that loop-through wiring configurations should be excluded from the Commission's cable home wiring rules and should instead be treated as part of the operator's distribution plant.¹¹ The Commission has consistently agreed with the City's position and has wisely excluded such wiring configurations from the cable home wiring rules.¹²

III. DISCUSSION

A. **Multiple Dwelling Units with Loop-Through Wiring**

With regard to Liberty's proposal that the Commission require cable operators to allow a building owner to purchase loop-through wiring where all subscribers in a multiple dwelling unit ("MDU") decide to switch to an alternative MVPD, the City shares the Commission's concern that allowing an MDU building owner to control such wiring may supersede subscribers' choice of service providers. We therefore recommend rejection of this proposal.

The City believes that cable operators should have the discretion, but should not be required, to offer such wiring for sale. Moreover, adoption of Liberty's proposal may have the

¹⁰ For a description of cable wiring methods in New York City, see id. at 3-5.

¹¹ Id. at 8.

¹² Report and Order, 8 FCC Rcd 1435 at para. 12 (1993); Home Wiring Recon. and FNPRM at para. 33.

anomalous and unfair result of forcing a cable operator to divest itself of its existing distribution plant in an MDU, yet still be required to rewire that building upon a single subsequent request for service.¹³ The ultimate effect of Liberty's proposed rule will not be an increase in subscriber choice, but simply the replacement of one monopoly provider with another. Contrary to the purpose of the Commission's home wiring rules, it promotes neither competition nor subscriber choice. It merely benefits alternative MVPDs at the incumbent cable operator's expense, essentially allowing the alternative provider to compete by appropriating a portion of the incumbent's distribution plant. At the same time, a cable operator would be burdened unfairly with the additional cost of rewiring if it receives a request for service from a subscriber or subscribers in an MDU where the operator has been previously required to sell its loop-through wiring. Thus, the incumbent would be obligated to twice wire the same building. The City believes such a result is neither competitive nor fair.

In addition, the application of the Commission's existing rules regarding compensation to loop-through situations is problematic. A per-foot replacement cost option for such wiring is impractical because loop-through wiring is located in conduit that is buried within the walls of the individual subscriber's unit. Therefore, the Commission's existing

¹³ For example, pursuant to the Universal Service Obligations of the New York City cable television franchise agreements, cable operators are generally required to install cable service for residential subscribers within eight days of a request. See Manhattan Cable Television Franchise Agreement, § 3.2.01, Appendix I § 2.3.03.

compensation rules do not account for the substantial additional costs that cable operators have incurred in constructing a loop-through system.

With respect to an appropriate demarcation point for loop-through wiring, the City believes that the only effective way to apportion control of a loop-through wiring system so that subscribers have a choice of MVPDs is to set the demarcation point at the tap side of the loop-through system in each subscriber's apartment. In other words, the wiring located in conduit within the walls of the MDU, which constitutes a portion of the cable operator's distribution plant, should remain in control of the cable operator (unless it has made other prior arrangements with either the building owner or the subscriber). On the other hand, the wiring within an individual subscriber's apartment, beginning at the wall plate terminal and ending at the television or converter box, should remain in control of the individual subscriber, subject to the Commission's existing cable home wiring rules. This would allow subscribers in loop-through systems to switch easily between competing MVPDs. Moreover, it would assure that such subscribers actually have a choice between MVPDs and would promote competition between incumbent cable operators and alternative MVPDs.

Finally, although the City has prohibited additional loop-through wiring configurations in its cable television franchise agreements for the reasons mentioned above, we believe the Commission should allow local franchising authorities the discretion to permit or prohibit loop-through wiring in MDUs. Local governments are in the best position to evaluate community

needs, as well as to promulgate and enforce such regulations. Other communities may actually favor loop-through configurations because of the greater protection such configurations offer against theft of service. While the City expresses no opinion regarding whether the Commission has the statutory authority to prohibit future installations of loop-through wiring configurations, we do believe that such matters fall within the traditional health, safety, and welfare concerns of local government. These issues should continue to be resolved at the local level.

B. Others' Rights to Cable Home Wiring

To promote the goals of Section 16(d) of the 1992 Cable Act, the City believes that—other than in bulk-rate situations—only subscribers, rather than building owners, should be given the opportunity to purchase cable home wiring where an MDU building owner terminates cable service for the entire building in favor of an alternative MVPD, regardless of the existing wiring configuration. We believe that such a rule would discourage arrangements between building owners and competing MVPDs that may obviate a subscriber's choice of service providers.

With regard to the disposition of cable home wiring where a subscriber terminates cable service, elects not to purchase the wire, and vacates the premises within the time period given the operator to remove the home wiring, the City agrees with the Commission that, as long as the cable operator has been allowed access to the premises for removal of its wiring (if it so wishes), whether the subscriber vacates the premises

has no bearing on the application of the Commission's rules. Consequently, the cable operator must remove the wire within seven business days of the subscriber's termination of service, or make no subsequent attempt to remove it or restrict its use, regardless of who subsequently resides in the premises.

In cooperative apartment and condominium situations, the City believes that where the voluntarily terminating cable television subscriber does not own the premises, the premises owner should have the right to purchase the cable home wiring if, and only if, the subscriber elects not to purchase the wire.

IV. CONCLUSION

The City of New York respectfully urges the Commission to adopt its recommended approach: (1) to continue to treat loop-through wiring as part of the operator's distribution plant, (2) not to require cable operators to sell loop-through systems to building owners when all subscribers in an MDU elect an alternative MVPD, and (3) to allow local governments the discretion to permit or prohibit loop-through wiring in MDUs.

Respectfully Submitted,

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